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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,307	04/11/2002	Mark Verschuur	322-00065	8198

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EXAMINER

THORNTON, KRISANNE MARIE

ART UNIT	PAPER NUMBER
1744	

10

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/009,307

Applicant(s)

VERSCHUUR, MARK

Examiner

Krisanne M. Thornton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☒ Claim(s) 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6-8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8-10, 12-16, 23 and 34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Leonard et al., U.S. patent No. 5,945,076. See Fig. 3 and Figs. 8-11.

Claims 1, 8-10, 12 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ebling et al., U.S. patent No. 5,569,161. See Fig. 11 and column 8, lines 3-17.

Claims 1, 8-10, 13-23 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Boulet WO 94/26633(abs). See the abstract and the Figures including Fig. 4.

Claims 1, 8 and 34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yamada U.S. patent No. 5,437,836. See Fig. 1 and column 3, lines 35-45.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowanko U.S. patent No. 6,162,395 in view of Schuster U.S. patent No. 4,002,324.

Kowanko teaches a sterilization container formed from two parts which open to expose the object to be sterilized, that object including endoscopes. The container is divided by a partition having an aperture therein which is formed of a resilient or deformable material through which the endoscope is inserted and held for sterilization (see column 4, lines 52-60). The container also includes vapor permeable means for passage of sterilant.

Schuster teaches the known and expected use of peelable vapor permeable cover means for sterilization containers utilized with tamper-evident means for the purpose of providing effective terminal sterilization and integrity evidence for medical instruments.

It would have been well within the purview of one of ordinary skill in the art to include the vapor permeable cover and tamper-evident means of Schuster with the sterilization container of Kowanko et al., because it would provide optimum containment

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of the sterilized medical instruments assuring terminal sterilization as well as, evidence of the integrity of such sterilization.

***Allowable Subject Matter***

Claim 37 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

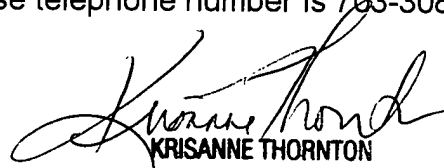
The following is a statement of reasons for the indication of allowable subject matter: the closest prior art of record fails to teach or suggest configuring and actuating a collapsing/deforming container to reduce the volume therein causing the object contained to break a closure and extend from the container.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne M. Thornton whose telephone number is 703-308-3914. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
KRISANNE THORNTON  
PRIMARY EXAMINER

September 30, 2003